

REMARKS

Claim 1 has been amended to clarify the invention, and better define the invention over the prior art. More particularly, independent claim 1 has been amended to specify that the blister pack is for use with inhalation therapy inhalers equipped with a vibratory de-aggregator, and now specifies that the first element has spaced areas for interfacing and coupling with the inhaler vibratory de-aggregator, and that the frangible second element overlying the first element defines a plurality of spaced top crowned areas located over the first element spaced areas and containing powder or liquid material. Claims 2 and 5 have been amended to conform to claim 1. Pursuant to 37 CFR 1.121, a marked copy of the amended claims showing the changes made therein accompanies this amendment.

Turning to the art rejections, and considering first the rejection of claims 1, 2, 8 and 13-15 under 35 USC § 102, U.S. Patent 6,029,663 to Eisele et al. does not anticipate the instant claim 1. Eisele et al. teaches a blister pack for a dry powdered inhaler where shear layers of the blisters are pierced, releasing medication into the inhaler (col. 3, lines 35-40). In Eisele et al., the shear layer is located on the bottom of the blister pack (col. 3, lines 10-12; Figures 5-7), and the contents are released and fall under the influence of gravity to the inside of the inhaler where it is mixed with air. Thus, Eisele et al.'s dry powder inhaler delivery system, which relies on gravity for dumping the contents of the blister, is position dependent. It cannot be turned upside down, or sideways, and may not work particularly well with a patient in a reclining position.

Applicant's claimed invention, on the other hand, is for use with an inhalation therapy inhaler equipped with a vibratory de-aggregator. Thus, Applicant's claimed blister pack is not position dependent, and is designed for mating with a vibratory de-aggregator whereby the blister pack contents will be forcibly ejected from the pack, i.e. by the vibratory de-aggregator.

not claimed
in claim 1

Moreover, there are other distinctions. Eisele et al. nowhere teaches or suggests spaced areas for interfacing and coupling with an inhaler vibratory de-aggregator as required by Applicant's claim 1. And, Eisele et al. nowhere teaches or suggests frangible overlying spaced top crowned areas located over the first element spaced areas as required by claim 1. Accordingly, since Eisele et al. fails to teach several elements of claim 1, Eisele et al. cannot be said to anticipate claim 1, or any other claims dependent thereon. Thus, the rejection of claims 1, 2, 8 and 13-15 as anticipated by Eisele et al. is in error.

Turning to the several obviousness rejections, it is submitted none of the secondary references supply the missing teachings to the primary reference Eisele et al. '663 to achieve or render obvious claim 1, or any of the claims dependent thereon.

Eisele et al. '237 is similar to the Eisele et al. '663 primary reference, and relies on gravity to dump the contents to a staging area under the blister pack. Pera, which is cited as teaching dispensing anti-oxidant vitamins, shows no specific blister pack structure. Hendricks, which is cited as teaching a dry powder inhaler for a hormone or steroid is quite different. Hendricks discloses a slidable dosing tray for dispensing medication from a storage chamber into an air passageway. Finally, Shyjan, which has been cited as teaching a blister pack containing a bio-active material, also fails to teach or suggest any particular blister pack structure.

Accordingly, since the several secondary references alone, or in combination with Eisele et al. '663, fail to teach or suggest the blister pack as claimed in claim 1, it is submitted that no combination of the art cited by the Examiner reasonably could be said to achieve or render obvious claim 1, or any of the claims dependent thereon. Thus, the several rejections of the claims as obvious from the art is likewise in error.

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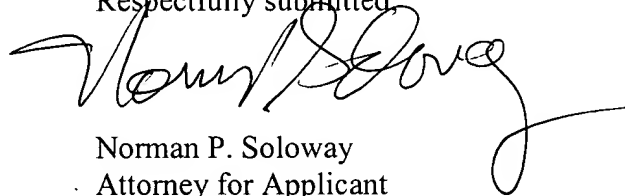
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Accordingly, claims 3, 5, 10, 11 and 12, are patentable over the art of record for the same reasons above adduced relative to claim 1, as well as for their own additional limitations.

With regard to the election requirement, since claim 1 remains generic to all of the claims, the Examiner is respectfully requested to rejoin claims 4-7, and allow all the claims.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our deposit account number 08-1391.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner of Patents and Trademarks, Washington, D.C. 20231 on October 9, 2002, at Tucson, Arizona.

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MARKED CLAIMS:

1. (Amended) A blister pack for use with inhalation therapy inhalers equipped with a vibratory de-aggregator, comprising [an elongate bottom] a first element[,] having spaced areas for interfacing and coupling with the inhaler vibratory de-aggregator, and a frangible second element overlying [top] the first element and defining a plurality of spaced top crowned areas located over said first element spaced areas, and containing powder or liquid material.
2. (Amended) A blister pack according to claim 1, wherein said [lower] first element comprises an elongate flexible tape.
5. (Amended) A blister pack according to claim 1, wherein the [bottom] first element includes a depression opposite the top crowned areas.